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1 2	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK
3	UNITED STATES OF AMERICA,
4	: CR-13-607 (JFB)
5	-against- : United States Courthouse Central Islip, New York
6	TOMMY CONSTANTINE, : December 18, 2013
7	Defendant. 2:45 p.m.
9	TRANSCRIPT OF ARRAIGNMENT/BAIL APPLICATION BEFORE THE HONORABLE JOSEPH F. BIANCO UNITED STATES DISTRICT COURT JUDGE
10	APPEARANCES:
12	For the Government: LORETTA E. LYNCH, ESQ.
13	UNITED STATES ATTORNEY BY: CARRIE CAPWELL, AUSA
14	DEMETRI JONES, AUSA DIANE LEONARDO, AUSA
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17	For the Defendant: EDWARD LITTLE, ESQ.
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20	Official Court Reporter: Paul J. Lombardi, RMR, FCRR
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25	Proceedings recorded by mechanical stenography.  Transcript produced by CAT.

2 THE CLERK: Calling case USA v Tommy 1 Constantine. 2 Please state your appearance for the record. 3 MS. CAPWELL: Carrie Capwell, Demetri Jones and 4 5 Diane Leonardo for the government. Good afternoon. 6 THE COURT: Good afternoon. 7 MR. LITTLE: Good afternoon, your Honor. 8 Ed Little for Mr. Constantine. 9 THE COURT: Good afternoon, Mr. Little. 10 11 Mr. Constantine is present. This is his initial appearance in the district. 12 13 I assume he arrived yesterday? MS. CAPWELL: Yes, your Honor. 14 I was informed yesterday by the marshals he 15 16 arrived. THE COURT: I'm going to give Mr. Constantine 17 his Rule 5 rights. He probably received them in Arizona, 18 but I will give them to him again in an abundance of 19 caution. 20 You have the right to have the charges that have 21 been filed against you presented to you. You have the 22 right to retain counsel or request that counsel be 23 appointed. If you cannot afford counsel, you have the 24 right to have the circumstances if any under which you may 25

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1	be released on bail be considered by the court. You have
2	the right not to make a statement. Any statement you make
3	may be used against you.
4	You understand that, Mr. Constantine?
5	THE DEFENDANT: I do.
6	THE COURT: Mr. Little, you have been retained
7	to represent Mr. Constantine?
8 .	MR. LITTLE: Yes, for this purpose, your Honor.
9	THE COURT: Is your client prepared to be
10	arraigned on the indictment?
11	MR. LITTLE: He is, your Honor.
12	THE COURT: Mr. Constantine, have you received a
13	copy of indictment 13-607?
14	THE DEFENDANT: Yes.
15	THE COURT: Have you had sufficient time to
16	review it and discuss it with your attorney for purposes
17	of your arraignment?
18	THE DEFENDANT: Yes, your Honor.
19	THE COURT: Do you waive or give up the public
20	reading of the entire indictment?
21	THE DEFENDANT: Yes.
22	THE COURT: How do you plead, guilty or not
23	guilty?
24	THE DEFENDANT: Not guilty.
25	THE COURT: A not guilty plea has been entered.

I'll now hear first from the lawyers in terms of how they want to proceed with respect to the case and we can discuss the issue of bail.

MR. LITTLE: Your Honor, since we last met we have been able to put together a much more substantial bail package.

THE COURT: Why don't we deal with the case proceeding forward and then discuss the bail.

> MR. LITTLE: Sure.

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THE COURT: Let me ask the government first to tell me in terms of discovery what you are providing and how we should proceed with respect to the scheduling of the case.

MS. CAPWELL: Yes, your Honor.

We do have another date in this case which is January 22nd, 2 p.m. for the codefendant Phillip Kenner, who appeared before your Honor already in this district and that date was set.

So the government would propose that we now make that the next date as well for this defendant, and what the government will do between now and that date is to produce discovery to the defendants. We started the process of gathering material.

We are going to do it on a rolling production of

records that we have amassed during this investigation.

We are in the process of collecting those, getting them

Bates numbered, scanned. Hopefully we'll get them mostly
on disk to give to defense counsel.

To the extent we have statements of the defendants, we will also turn those over, including any prior testimony or affidavits that were submitted by these defendants. It is a voluminous amount of discovery, your Honor. So we do anticipate that it will take quite a while to produce everything, but we will endeavor to begin that production as soon as possible and prior to our January 22nd date.

So for those reasons we would ask your Honor to enter an order of excludable delay until January 22nd, for the purposes of allowing the government to begin to provide discovery and for defense counsel to begin its process of reviewing that discovery and certainly we will also put together a proposed plea agreement to turn over to the defendant.

MR. LITTLE: The date is fine, your Honor, and we agree to the exclusion for speedy trial purposes.

THE COURT: I have the waiver before me. Let me confirm that with Mr. Constantine.

Mr. Constantine, you heard your lawyer ask me to adjourn the case until January 22nd so that you and your

attorney can continue to receive discovery from the government, review it and decide how you want to proceed with respect to the case.

By signing this waiver you are agreeing to exclude the time under the Speedy Trial Act until January 22nd to allow you to do that.

Is that your wish?

THE DEFENDANT: Yes, your Honor.

THE COURT: I will grant that application.

Your appearance is adjourned to the date we had previously scheduled for Mr. Kenner on January 22nd at 1 o'clock.

THE COURT: I had already excluded the time for the case as a whole until that date because there was only one speedy trial clock per case, but I will make the adjournment again in this defendant's presence.

I exclude the time until January 22nd under 3161(H)(7)(a). In order to allow the defendant and his counsel to review the discovery and decide how they want to proceed with respect to the case as well as the codefendant, I find the ends of justice served by granting the continuance outweigh the best interests of both the public and the two defendants in a speedier trial and I have so ordered the waiver.

MS. CAPWELL: Your Honor, before we get to the

7 issue of bail, I think it's probably also worth addressing 1 and I raised this before your Honor came out with 2 Mr. Little that I noticed when Mr. Little filed his notice 3 of appearance he wrote in it was for arraignment purposes 4 only and I wanted to make sure the court was aware of 5 that. 6 I don't think that's typical in this district to 7 appear only for arraignment purposes. I wanted the court 8 to be aware of that. 9 I caught that when I asked you if THE COURT: 10 11 you were retained. You are just retained for purposes of 12 arraignment and the issue of bail, is that accurate? 13 MR. LITTLE: That's correct, your Honor. 14 I don't know that that's the government's 15 concern, but, at any rate, as Ms. Capwell knows, the 16 defendant's in bankruptcy right now. So obviously 17 18 something has to be done. We haven't worked that out yet. 19 THE COURT: Okay. 20 I will allow Mr. Little to appear for purposes 21 of the arraignment and bail. Obviously if 22 Mr. Constantine, you are unable to afford counsel, you can 23 always request that counsel be appointed. 24 You understand that? 25

THE DEFENDANT: I do.

THE COURT: Why don't we proceed to the issue of bail.

Because Mr. Constantine was not present when I heard argument from the lawyers and issued the stay of the magistrate judge's decision in Arizona, I'm going to treat this as a new bail hearing. I'm going to consider it de novo.

So I'll have the government go first and I have heard a lot of the arguments, but because Mr. Constantine wasn't present I'll consider it to be a full bail hearing because it is a de novo review in any event.

Go ahead, Ms. Capwell.

MS. CAPWELL: Thank you, your Honor.

I'll also place on the record in terms of what we filed on the detention issue on November 13th the government filed a detention letter with your Honor and it's also provided to defense counsel and also on November 21st we filed our motion to stay the release order from the district of Arizona and we were also asked in that letter that the defendant's release be revoked.

So some of the grounds for arguments were there, but our position has been from the get-go, and it remains, that a permanent order of detention should be entered here because the defendant poses a serious risk of flight and

that no condition or combination of conditions would be sufficient to reasonably assure the court that this defendant would appear at future court appearances.

Some of the factors that we have considered and that go toward his risk of flight are one which is the potential sentence that he faces in this case, based on the charges which are serious, conspiracy to commit wire fraud, substantive wire fraud charges as well as a conspiracy to launder money, and those charges and as we allege in the indictment the losses to the victims are at least \$15 million between both the defendant and his codefendant, Mr. Kenner and this defendant is easily responsible for at least half of those losses, so at least \$7 million of those losses.

There are several victims in this case, more than 15 victims, probably more than 20 victims in this case. Not all of them listed as John Does in the indictment, there are additional victims as well. Because of the loss amount and because of the number of victims and the sophisticated means that were used in this case to perpetrate a fraud over a number of years, the guideline range that the government is calculating is approximately 151 to 188 months for this defendant, which is about 12 to 15 years, clearly a significant amount of time that this defendant is facing, and a very serious reason that the

defendant would have to flee prosecution, leave the country, and avoid the potential of spending more than ten years in jail.

The defendant is in a criminal history category II based on a 1996 drug narcotics conviction out of Illinois. The evidence in this case is strong. The indictment is a speaking indictment and is very detailed, but the evidence here includes financial records, voluminous financial records that track the money from the victims giving the money to Mr. Kenner, and at times also to Mr. Constantine, and tracking the money flow, the various accounts it went through. It was a very sophisticated fraud.

So there are multiple accounts with different names, holding companies, shell companies. So tracking the money is quite an endeavor, but the financial records do show that a large portion of the money that the investors invested believed they were investing in property, start-up companies, actually ended up being used by the defendants just for their personal needs, paying mortgage payments on their own properties, getting homes out of foreclosure, traveling, credit card bills, all kinds just to fund their lifestyle, and also the moneys were used just for purposes that weren't authorized or even known to the victims.

In addition to the financial records, we do have several victims who would come to testify about the representations that were made to them, the moneys that they invested, and ultimately what happened to their money and the loss of their money.

We also have e-mail and text message communications, many of those are between the victims and the defendants. Some are between Mr. Kenner and Mr. Constantine. We have some text messages regarding where some of the money that the victims invested in Euphora went. We also have a recording, an audio recording between defendant Kenner and Mr. Constantine, in which basically Mr. Constantine describes himself as a get-away driver. Mr. Kenner's the robber, Mr. Constantine is the get-away driver. And we would certainly argue at trial that that was an admission of his culpability and his perception of his role in this scheme.

In addition, we are -- that's a summary of our evidence at this point. We also believe that

Mr. Constantine poses a risk of flight --

THE COURT: Before you get to the other factors,

I saw in your letter you talked about forged signatures
and fictitious documents as well.

Does that involve Mr. Constantine? Do you have evidence of him forging signatures or creating fictitious

He's no stranger to Mexico, and he also traveled to

12 times, based on our travel records, between 2007 and

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2009.

Greece quite some time ago in 1998, which is another point, is that the defendant does have connections to Greece.

We have a witness who advised the government I think it's actually a victim that advised the government that at one point Constantine stated that he had family in Greece and if necessary he could move there. We have evidence that the defendant speaks Greek and speaks Greek to his family members. So he certainly knows the language and can survive in Greece.

We also have evidence that his family I believe it was his mother sold property in Greece within the last two years and I believe part of that was to fund the purchase of the home in Scottsdale, which is one of the properties that I believe the defendant proposes to use to request bail in this case.

So there certainly are ties to Greece that would corroborate what the victim told us. In addition, the defendant worked prior to his arrest in the aircraft industry. He was the founder of a company called Set Jet, which is in Scottsdale-Phoenix area, which offers private VIP flights to a few cities, Los Angeles and a few other cities.

In addition, he's worked for many years and this was in his pretrial services report, for AZ Falcon

Partners, also in Scottsdale, which also owns aircraft.

So he also would have access, both through his prior employment and through all of his contacts in that industry which is very well documented simply through the internet. There are many postings, even on his own Tommy Constantine Web site, he kind of boasts about the fact that he, himself, is a helicopter pilot and there are news articles of him being the founder of Set Jet.

So he clearly would have access, both through his contacts in his prior employment to private aircraft, and he, himself, knows how to pilot a helicopter.

I think very importantly is the fact that he lives in Scottsdale Arizona. It's not a far drive to the Mexican border. It's through our travel records, it's clear that in order for somebody to leave the United States and go to Mexico, they are not necessarily stopped at the border. You can drive through. There's not any immigration checks at that point. It's when somebody tries to enter into the United States that there's the immigration check.

So it would be very easy for the defendant from his home in Scottsdale to jump in the car and be in Mexico in a matter of hours, so even if the defendant were on an ankle bracelet as the magistrate judge ordered as part of the release package, that would not be sufficient to deter

or prevent him from traveling to Mexico if that was his plan. By the time the pretrial services officer had an indication that Mr. Constantine was outside the limit of where he was supposed to be, it would be too late at that point to prevent him from traveling into Mexico, and then after that, certainly there have been cases where people have been once they get to where they are going are able to remove the ankle bracelet.

So we certainly think it would be easy enough for him to get to Mexico and then travel to wherever else, including Greece, if he wanted to go to after that.

Also, your Honor, just in terms of the statements he made to pretrial services that are in the pretrial services report, as well as some of the testimony he gave at his own detention hearing in Arizona and compared to statements that he made in his bankruptcy petition in the district of Arizona, there are a number of inconsistencies there, touching on his income.

For example, in the pretrial services report, it reports that he makes \$5,000 a month, I believe working at the AZ Falcon Partners, versus in the bankruptcy petition he reported no income for the last two years and there are a few examples of that.

Another example of what brings the government some concern in terms of his, that he would return to

court and is able to follow the issue of being able to follow the judge's instructions and rules and to respect the court's orders, when we see some of these inconsistencies, that's what concerns us and in the pretrial services report, from Arizona, on page two toward the bottom it says Mr. Constantine self-disclosed his home was foreclosed in 2006, however could not recall the address to his residence.

The government finds that to be suspect, and from our investigation and our research, there was a home in Scottsdale on North 93rd Place that Mr. Constantine purchased in March of 2006 for approximately \$768,000, and in March of 2009 that property went into foreclosure, not clear that's the property he's referring to, but \$450,000 that the victims invested into the global settlement fund in this case were transferred in June of 2009 to an associate of Mr. Constantine, and then two days after that transfer, that \$450,000 was transferred to a title company and by June 16th of '09, Constantine's friend or associate then owned that property on North 93rd Place in Scottsdale.

In the bankruptcy petition, the defendant reported that he was at that address until August of 2009. So it's just of some concern that through the pretrial services reports that he said that one of his homes was

foreclosed in 2006, but he couldn't remember the address, and it seems like that address has a relationship to this case here and that funds that were taken from the global settlement fund, which were supposed to be used primarily for legal defense in connection with investments, real estate investments, was then transferred to an associate of Mr. Constantine and used to purchase the home that was in foreclosure. That's just one example of some of the inconsistencies and concerns from the pretrial services.

In the pretrial services report as well there was some discussion of this in the hearings in Arizona, the defendant reported his home as being the 2555 North Windy Walk Drive address in Scottsdale, Arizona, which is, again, the home that was offered for bail purposes in Arizona, and that's the home where his mother lives. The defendant was actually living with his girlfriend at a second address which is at the top of page two of the pretrial services report at 103rd Street in Scottsdale.

But, again, he just disclosed to pretrial services that he resided at the girlfriend's address at times, based on surveillance in this case, the arrest in this case, he was living at that other address, the 103rd Street address, not at his mother's address. Those are just a few of the things that in addition made the government pause about the defendant's representations.

So, your Honor, I think that primarily sums it up. I may have some other things to add after Mr. Little speaks, but based on all of those reasons, we believe he poses a risk of flight in this case. It would be too easy for him to flee, especially looking at the sentence, potential sentence he's looking at, which is greater than ten years in this case.

Thank you.

THE COURT: Thank you, Ms. Capwell.

Go ahead, Mr. Little.

MR. LITTLE: It's a minor thing, but I want to correct it right away.

This thing about the house, he gave his mother's residence because his partner, her lease was up. She was moving out. So he gave the mother's address as the address he would be living since the lease was up. So that's a gross exaggeration.

Your Honor, since the last time we met we have been able to substantially increase the bail package. Pretrial services, by the way, despite what counsel characterized as their concerns about some minor points and I can address those later, recommended release on the \$500,000 bail secured by real estate. Obviously we understand the court has stayed that and it's a de novo hearing now.

But despite those minor points, pretrial services still recommended he be released on bail. The \$5,000 item where he said he was making \$5,000 a month, what he said was he expected to make \$5,000 a month once the Falcon partners aircraft business was up and running and they said we shouldn't talk about that because that's a subjected case and the discussion ended there. That was explained as counsel knows during the hearing and it's in the transcript.

Let me go back to the bail package we are proposing, your Honor. Mr. Constantine's mother, Mrs. Kehey Constantine, has pledged her house and there is an appraisal in the record of \$500,000. The original bail was approved by the court there. She lives there. It's her home and her primary asset.

In addition, Tommy's brother, who is a severe epileptic, who is unemployable, lives there as well. It's beyond belief that he would flee and render them homeless.

But, in addition, we have two other sureties,
Sue Ellen Ferguson who lives in Delray, Florida, has
agreed to pledge her home which can easily cover another
\$500,000 on a personal recognizance bond and we can get
the papers to establish that. Mrs. Ferguson is the mother
of Tommy's best friend who died from leukemia, and even
though Mr. Constantine has his mother, in addition

Mrs. Ferguson is almost a surrogate mother to him and is happy to sign bail and pledge her own home, so that's a million dollars.

In addition, Dr. Kip Lassiter, who is a highly respected doctor and a very successful businessman in the Phoenix area has agreed to pledge an additional million dollars which he can secure with real estate.

Mr. Lassiter is the owner of the Set Jet company. It's not Mr. Constantine, as counsel suggested. That

Mr. Lassiter is a very prominent businessman and he agreed to increase the bail.

So we have a total package of \$2 million.

Obviously it will take time to obtain appraisals and necessary paperwork to secure the properties, but we are proposing that as a package. We submit it's just not believable that Mr. Constantine would abandon his mother, his brother, Mrs. Ferguson, who's a second mother to him, as well as his business partner, Mr. Lassiter, and deprive them of \$2 million in bail by fleeing.

In addition, he has already surrendered his passport, and despite the urban myth Mexico is a safe place to flee, it's not true. You cannot go to Mexico without his passport. His passport has been surrendered. It's a gross exaggeration to suggest he's familiar with Mexico and goes there a lot. The trips he made were back

in 2007 to 2009 in connection with a business venture involving a golf course, the Diamanté Resort. These were all business trips of I guess three or four years ago now. Since then he went there once on vacation, but the fact of giving over the passport would make it impossible for him to even enter Mexico.

I'd like to address this business about the airplanes, which is another gross exaggeration. He has been relieved, once he was arrested, the owners of AZ Falcon Partners, a partnership that owns three aircraft, relieved him of all of his responsibilities. In addition, none of those aircraft can be used, as counsel should know. They seized the Falcon 10, the other two aircraft, the Falcon 20 and a Falcon 50 are grounded. They are going through a six-year renovation. They are not flight worthy. But, in any event, the owners of that business will not permit him to have access to the property.

Mr. Constantine helped organize that company years ago, but Mr. -- Dr. Lassiter, who's pledging a million dollars from his own assets to secure his bail, is the primary shareholder there and there is no way that he would jeopardize his million dollars of exposure by giving Mr. Constantine access to the jets, and he's showing his support for his bail by subjecting himself to a million

dollars worth of liability.

There was reference to Greece. This is probably the grossest exaggeration so far. Mr. Constantine was born and raised and lived here his entire life. He speaks Greek because his parents speak Greek. He went to Greece once where he visited his aunt who has since died. He was on a business trip to Turkey and he stopped in Greece to visit her.

He hasn't been there since he was a young boy. It's ridiculous to suggest that somehow he would depart for Greece. It makes no sense. In addition, Greece has extradition treaty with the United States.

THE COURT: Your position is the victim made that statement up?

MR. LITTLE: Yes, I do.

There has been vicious civil litigation and arbitration between and among various hockey players and a person named Ken Cowdy who frankly is surprising hadn't been named in this indictment since he's the one that ran the Mexican resort known as Diamanté and that's where the hockey players' money is lost. For some reason Mr. Cowdy has not been charged here.

That brings me to the charges, your Honor, because again they have been grossly exaggerated. First of all, \$90 million of the alleged losses are attributed

to the Hawaii project. The Hawaii project began long before Mr. Constantine even met Mr. Kenner. Kenner put hockey players' money apparently in that project at the time he met Mr. Constantine, he purported to be the owner of that prong.

Mr. Constantine had no involvement with hockey players in connection with that investment, and didn't know that the hockey players were involved in that until much later when there was a civil arbitration and he was shocked to find out that Kenner lied to him and actually put the hockey players' money in it. We think the government's evidence with respect to his involvement as far as the Hawaii case is concerned will be insufficient to get any kind of a conviction.

There is reference in there to \$3.5 million.

That is money that Mr. Constantine raised with a man named James Gardina and the government knows about this, who is an investor who put forward \$3.5 million as part of bridge financing before Lehman Brothers came into the picture to finance the Hawaii project to completion. There is the reason Mr. Constantine was compensated by Mr. Kenner during the tail end of the Hawaii project. But to suggest somehow he's a coconspirator of the Hawaii project will not be borne out by the evidence.

No. 2, there are a lot of allegations about this

so-called global settlement fund. It is true that the hockey players were asked to put money in a fund in Ron Richards account. Ron Richards is a lawyer who is handling litigation. He had an escrow account and money called the global settlement fund was put in that escrow account.

In addition, and completely separate from that, other money was deposited by Mr. Constantine in that account, and the withdrawals for his personal benefit came from his funds, not from the global settlement fund, the escrow account and the global settlement fund had been conflated into one thing. They are entirely separate.

That escrow fund is an attorney's escrow fund that has different funds within it. And the money that the government claims was released to Mr. Constantine which he used for personal expenses came from deposits that he made and his investors made in that, not from hockey players' money.

Finally, there are two paragraphs in the letter submitted by counsel on the Eastern District case, and admittedly the government actually comes out and says that's a separate fraud not involving Mr. Constantine. So to say this is a \$15 million fraud is to grossly exaggerate it, and his exposure, therefore, is not the 12 years that counsel talks about. It's probably less than

half that.

If Mr. Constantine were to flee, he knows that in addition to being prosecuted on the substantive charges, he faces an additional five years for flight. It would be insane for him to flee, to in effect double his potential exposure, which I believe is more like five years to ten years, but, more importantly, to abandon his own mother, his epileptic brother, Mrs. Ferguson, who's a second mother to him, and his business partners exposing himself to \$1 million in exposure to so-called flee to some unknown destination.

There's no reason in a white collar case like this that he should not be given bail with an amount of \$2 million and all this security and we would agree to a very strict pretrial reporting.

May I have a moment, your Honor.

(Whereupon, there was a pause in the proceedings.)

MR. LITTLE: Most importantly, your Honor, and this is personal, but I think this is the strongest thing we can say, his partner, Sara Bauers, is six months pregnant with his first child, a son, who is to be born in March. It's inconceivable that he would bolt with that circumstance, in addition to betraying his family and

friends.

Finally, your Honor, I made mention to this the last time we were here. I have represented Mr. Constantine for the past three years, and during that time we had repeated meetings with the Southern District of New York's US Attorney's Office, Arlo Devnon Brown was the assistant, and as recently in this last year we went in and had an extended proffer with Mr. Devnon Brown and he was to contact us for a second proffer.

It is highly unlikely in white collar cases, your Honor knows this from your Honor's own experience, in a white collar case where a defendant knows about an investigation for years, where he's retained counsel, where counsel is going in to make proffers and presentations where he himself is going in, where he would have had the opportunity to flee for a long time before the charges were brought, would flee now. It makes no sense at all.

So for all these reasons, your Honor, we ask that the court approve a bail package of \$2 million.

Obviously we'll need time to secure for the government's consideration appraisals and whatever else needs to be done to secure the real estate securing all these bonds.

So we recognize there will be some delay here, but we will move quickly and we believe this is the only just result.

Thank you.

THE COURT: Thank you, Mr. Little.

You want to respond, Ms. Capwell?

MS. CAPWELL: Just briefly and I'll address the last point that Mr. Little raised again about the investigation in the Southern District.

It's my understanding there was only one meeting where the defendant was present, December of 2012. I wanted the record to be clear there weren't multiple meetings where the defendant and Mr. Little met with the Southern District.

And obviously there is a change in circumstances here, your Honor noted that when we were in court on November 21st. It's different when somebody thinks they are meeting with a US Attorney's Office just to discuss and answer questions versus once there is an indictment and an arrest warrant for that individual and they are looking at charges that could bring them more than ten years in jail. Certainly there is a change of circumstances here from just voluntarily going in to speak to the government.

And then just some issues on the properties that the defense counsel spoke about. One was the home of the defendant's mother in Scottsdale. We received a title search on that property and it indicates that there are

three liens on that property. That would be of concern as to that property. It appears that there is a \$3,900 lien, an \$80,000 lien and it appears there is a \$250,000 mechanics lien on that property.

As to Sue Ellen Ferguson, the second individual defense counsel listed as being willing to post a home in Florida, from our investigation it is our understanding that the defendant owes her \$9 million at this point. She advised the agents that that is the case, she corroborated that that is the case that the defendant does owe her \$9 million.

THE COURT: From what?

From investment money? What is the \$9 million from? Hold on, Mr. Little. I'll give you a chance.

MS. CAPWELL: Your Honor, it's not clear what that money was from, but she did say that with interest he owes her \$9 million. I believe this goes back quite a few years as well.

From our investigation we also know that she's somebody who lives well. She's comfortable, and so another \$500,000 on top of the \$9 million that he owes her in the scheme of things is really not that much. If he already owes her \$9 million, what's another \$500,000?

And, finally, as to defense counsel's statements about Mr. Constantine and his connections to Set Jet and

AZ Falcon Partners, we do have an e-mail that's dated January of 2012 from Mr. Constantine to a number of it says undisclosed recipients forwarding Set Jet membership preregistration confirmation and at the bottom on the signature block it's Tommy Constantine, chairman and cofounder, Set Jet, LLC. So up until early last year he was still representing himself as the chairman and cofounder of that company.

And, in addition, in his bankruptcy filings under schedule B of personal property, AZ Falcon partners, LLC is listed as an aircraft management company and the debtor's interest is 50, 5-0, percent, so he owns an airplane needing extensive repairs and worth less than the lien, but he does state he has a 50 percent interest in that and this is from April of 2012.

THE COURT: Let me ask you two questions in response to Mr. Little.

He suggested to the court that the diversion of the victims' money was not, in fact, a diversion that there was a separate attorney escrow account, and that was the money that Mr. Constantine was using for mortgage, whatever personal items that you are arguing that he diverted victims' money.

What's your response to that?

MS. CAPWELL: Your Honor, I know of at least one

example where a victim who believed he was investing in Euphora sent I believe \$200,000, and I believe that full amount went into the GSF fund -- I'm looking at my agent to get confirmation.

Your Honor, in terms of our allegations to the GSF funds, our allegations pertain strictly to money that was invested by the players as their GSF contribution. So those monies were supposed to be going to help with the legal fight against Ken Jowdy, et cetera, as it was represented to the players by Mr. Kenner and Mr. Constantine.

There are instances where money that the defendant Constantine recruited from at least one individual I know off the top of my head as an investment in Euphora, ended up going into Ron Richards escrow account and then got moved out of there into another account and told by the defendant, then ended up going into Euphora and then ended up being used by the defendant for personal uses.

As to the GSF fund and the losses we are alleging there, they pertain to moneys that the hockey players invested for legal defense and for some other purposes that were outlined by the defendants.

THE COURT: Then on the loss amount, Mr. Little suggested it's a fraction of the \$15 million.

I thought I heard you say Mr. Constantine's responsible for at least half, is that correct?

MS. CAPWELL: Yes, your Honor, and that is still our position.

We have evidence that as to the Hawaii investments, even prior to the loan that Mr. Gardina and Mr. Constantine purportedly made to the Hawaii investment, even before that Mr. Constantine was receiving large amounts of money from the Hawaii investments.

In addition, in terms of the backdating and forged document that I mentioned earlier in response to your Honor's question, a couple of those documents were consulting agreements in connection with the Hawaii project, and the government's position is that those consulting agreements were created well after the fact and backdated to try to justify why Mr. Constantine was receiving funds that were supposed to be going to the Hawaii investments.

And, in addition, with the whole issue with the \$3.5 million loan that Mr. Little mentioned, it's the government's position that a large chunk of the money that Mr. Constantine ultimately received back from the Hawaii project due to that loan was actually part of the fraud, in the nutshell without going into too much detail, basically Mr. Kenner and Mr. Constantine conspired to

basically pay back the loan before they had to and there was a prepayment penalty that was built into the loan agreement.

And even though Lehman Brothers and another entity told Mr. Kenner that he should avoid that prepayment penalty by paying back almost the entire loan, but holding back a little bit of it, Mr. Kenner insisted he wanted to pay back the loan in full early, despite this penalty which was egregious, I think it was \$2 million, it was a \$2 million prepayment penalty which could have been avoided.

And one of the conditions that Lehman Brothers and one of the other entities involved put into an agreement was that Mr. Kenner was to receive absolutely no moneys from the prepayment penalty, indirectly, directly, in any form if they were going to, in fact, have to pay this prepayment penalty and as our investigation reveals, the moneys that went to Mr. Constantine, about \$700,000, then flowed from accounts that Mr. Constantine then controlled to Mr. Kenner of the money that he was not supposed to receive.

So even with that \$3.5 million loan, it's our argument that is part of the fraud in this case.

THE COURT: Mr. Little.

MR. LITTLE: May I respond briefly, that was a

lot of information and they are trying their case now.

But the government didn't quite respond to the court's question about the money that came out of the global settlement fund or more properly the escrow account. Sergei Gonchar is a hockey player. He had a forensic accountant review Ron Davis's -- the attorney's escrow account, Ron Richards, and determined to his satisfaction that all of the money that Constantine got out of the escrow account did not come from the global settlement fund, but came from funds that were deposited from other sources.

With respect to the so-called \$9 million that he supposedly owes to Sue Ellen Ferguson, first of all it's not \$9 million, it was \$6 million, and he doesn't owe it to her. That's her investment in Euphora. She she's the primary investor in this credit card company and the fact she's willing to post her home in addition shows she is not a defrauded investor they are suggesting and it boggles the imagination to assume since she's in it for \$6 or \$9 million, she might as well be in it for another \$500,000. People don't think that way. If she thought she was being defrauded or abused, she wouldn't give him another dime.

The suggestion that he's really an owner of AZ Falcon Partners is another conflation the government did.

He's 50 percent of the management company. They don't own the jets. The jets are owned by a partnership called AZ Falcon Partners. These are investors who used to have him manage, but now he no longer will. He's been relieved of his responsibilities.

As far as his being chairman, he was chairman before the business was funded. He's no longer chairman of anything.

Let me see if there is anything else here.

The so-called forgery is not accurate, your Honor. We expect if this case goes ahead to trial as I think it will, that the so-called forgery was not the person whose signature was supposedly forged actually signed that document in front of a number of witnesses in Hawaii, and still counsel cannot respond to the whole point that the Hawaii part of this so-called fraud conspiracy occurred before Mr. Constantine was involved.

He had no knowledge of the hockey players' involvement. He thought it was Kenner's financing, and he was paid money as a consultant at the rate of \$20 or \$30,000 a month to find new investors and James Gardina actually did invest. There was a real \$3.5 million that was invested as bridge financing.

The only point, your Honor, because  ${\bf I}$  know we can't try the case, but there are answers to these things.

This is not a slam dunk case.

THE COURT: What's your answer to the audio regarding where he apparently refers to him as the get-away driver for Mr. Kenner?

MR. LITTLE: He was not talking about himself.

He was talking about Ken Jowdy.

When you read the whole transcript this context, he's accusing when Kenner was trying to suggest that he'd be liable for all these things even though Kenner is the real malefactor in this he said no, you are wrong. You are the real bank robber and the other guy is the get-away driver, it's Jowdy.

Jowdy is the one that defrauded the hockey players with a Mexican golf resort that Mr. Constantine had nothing to do with this indictment. And again one wonders why Mr. Jowdy was not charged in this indictment since most of the hockey players' money was lost as a result of the resort in Mexico.

THE COURT: What's your answer to the lien on the mother's house?

MR. LITTLE: We don't know anything about it, but we'll look into it.

We thought the title search was clear.

Obviously if it's not clear we'll come up with other security and fix that. It's the first I heard of it.

THE COURT: Thank you, Mr. Little.

The court has reviewed the bail issue de novo, both from the submissions and arguments of counsel and I believe the government has met its burden of proof by a preponderance of the evidence that there are no conditions that can reasonably assure the defendant's appearance in court.

I will state the reasons for that decision now, but going through the various 3142 G factors, first the nature and circumstances of the offense, this is obviously an extremely serious offense involving millions of dollars in alleged fraud. Whether or not Mr. Constantine is responsible for the \$15 million that the government says is the entire scope of the fraud or several million of that amount, it's still a serious offense, and the defendant is facing substantial jail time based upon the nature of the alleged fraud in this case.

With respect to the weight of the evidence, the government has proffered, which the court can accept for purposes of a bail argument, that a number of victims would testify as to Mr. Constantine's role in the alleged fraud. Obviously there's been a grand jury determination that there is probable cause to believe that Mr. Constantine was involved in the fraud, and the government has proffered that they have financial records,

e-mail, text, that will corroborate the defendant's involvement in the fraud, as well as the diversion of at least some portion of the money that the victims believed was going to be investment.

The next factor in terms of the history and characteristics of the defendant, the defendant certainly has the ability, whether it was for purposes of the investment or not, the defendant certainly has the ability to leave the country through Mexico and flee the United States. He has had substantial international travel to Mexico. He does have some ties to Greece, whether or not he's visited there, he certainly has ties there and the government has proffered, again, that the victim will testify that he stated that he had family in Greece. He could move there.

The issue of the aircraft industry, whether or not he has access to aircraft in the court's view is not a critical determination for purposes of the bail. With or without aircraft it's the court's belief he could easily leave the United States if he wanted to flee.

I'm not sure, Mr. Little, what urban myth you are referring to. I think if the defendant wants to leave the United States, even if his passport has been confiscated, it certainly would not be difficult for the defendant to leave the United States from Mexico or some

other means if he wished to, with or without his United States passport.

I think cases are littered with individuals who are able to do that despite their passports being surrendered to the government. You have the defendant who is asserting he is essentially bankrupt at this point. He has no job. He's not married although he does have obviously ties to the community in terms of his mother, siblings, and his pregnant girlfriend, I do not believe, there is no basis to believe that is going to be sufficient moral suasion for him to remain in the United States when faced with substantial jail time and the strong case that the government has proffered.

It creates an enormous risk of flight that I don't believe that there are any conditions or combination of conditions that can reasonably assure his presence in court. The fact that the defendant knew of the Southern District investigation, I agree with the government, that the fact that the defendant comes in to try to explain his involvement with what the government believes is a fraud, and the fact he did not flee at that point does not necessarily mean he wouldn't flee once he's been indicted. The stakes have not changed.

He now has to face these charges and the calculous and the extent of the flee is magnified

enormously at that juncture as opposed to just trying to explain to the government what your involvement or lack of involvement was with respect to a fraud prior to the indictment.

With respect to conditions that the court could impose in terms of electronic monitoring and the GPS locational device as I noted at the time I issued the stay and I'll reiterate here, Ms. Capwell and the government pointed this out, the defendant has the ability to flee. Whether or not he's wearing one of those bracelets, he has an enormous head start if he decides to leave whatever residence that bracelet is triggered to because by the time the government is able to respond to that alarm, the defendant is gone. He's gone.

He could cut off the bracelet, and be on his way. So that does not provide sufficient assurance, at least to this court, that he will not flee if the government were able to track him if he wanted to flee.

With respect to the bail package, again, I would just note that it's unclear what moral suasion the mother of his best friend and this businessman that are willing to post property would have over him in terms of his mother's house as well. It's my belief there are no conditions, I'm not determining that this particular bail package is insufficient, although I believe it is, but I

also believe that no conditions can reasonably assure his presence in court or combination of conditions, given the combination of factors and circumstances that have presented to this court in this particular case.

So for those reasons I'm going to detain the defendant pending trial. Obviously, Mr. Little, although this is a case that has a substantial amount of discovery, I understand the deprivation of liberty that is associated with pretrial detention, and I can assure you and your client that as soon as he's ready to go to trial, I will schedule a trial date. The government will have to be ready, and I'll schedule that as quickly as he and his counsel are able to prepare a proper defense in the case.

So for those reasons, the defendant is detained.

Is there anything else from the government?

MS. CAPWELL: Your Honor, the only issue, and I guess Mr. Little and I can discuss this, in terms of providing discovery, I guess I would need to know whether Mr. Little is going to stay on beyond today before I start turning over discovery.

THE COURT: Just keep in communication with the government in terms of what your status is going to be,

Mr. Little.

0kay?

MR. LITTLE: Of course.

THE COURT: Thank you. Anything else, Mr. Little? MR. LITTLE: The government ought to produce and not delay because of that. THE COURT: Don't wait until that issue is resolved. Obviously, Mr. Little, as an officer of the court whatever you produce to him he will produce to the next counsel should he be relieved. MS. CAPWELL: Yes, your Honor. MR. LITTLE: Thank you. THE COURT: Okay. Thank you. (The matter concluded.) 

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